
(2013) 1 RLW 203

Rajasthan High Court (Jaipur Bench)

Case No: Criminal Appeal No. 518 of 1984

Mohan Lal

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 10, 2012

Acts Referred:

Penal Code, 1860 (IPC) " Section 161#Prevention of Corruption Act, 1988 " Section 5, 5(1), 5(1)(d), 5(2)

Citation: (2013) 1 RLW 203

Hon'ble Judges: Meena V. Gomber, J

Bench: Single Bench

Advocate: Deepak Soni, for the Appellant; Mahendra Meena, Public Prosecutor, for State, for the Respondent

Final Decision: Dismissed

Judgement

Meena V. Gomber, J.

This criminal appeal has been filed by the accused-appellant against the judgment and order dated 29.10.1984

passed by learned Special Judge, ACD Cases, Jaipur in special Criminal Case No. 13/79 "whereby the appellant had been convicted and

sentenced for offence punishable u/s 161 of Indian Penal Code and Sec. 5(2) read with Sec. 5(1)(d) of the Prevention of Corruption Act, 1947

(hereinafter for short referred to the Act of 1947") to one year"s rigorous imprisonment for offence under Sec. 161 IPC and one year"s rigorous

imprisonment along with fine of Rs. 500/- for offence under Sec. 5(2) read with Sec. 5(i)(d) of the Act of 1947 in default of payment of fine, he

was to further undergo rigorous imprisonment for three months. Both the sentences were to run concurrently. Briefly stated the facts of the case

relevant for the purpose of disposal of this appeal are that on 20.10.78, appellant, working as Jamandar in Chokri Topkhana Desh Area in the

Municipal Council Jaipur, was a public servant and had accepted an illegal gratification of Rs. 30/- from Sita Ram, Safaiwala (PW.1), employee in

the Municipal Council, Jaipur and said gratification was accepted in pursuance of his earlier demand for recommending his medical leave

application for the period 21.6.78 to 30.9.78 when said Sita Ram was absent from duty. The complainant Sita Ram, on complaint submitted to the

Addl. S.P., Anti Corruption, Jaipur City a trap was arranged on 20.10.78 and the appellant was caught red handed in the presence of motbirs

Ramesh Kumar (PW.3) and Om Prakash (PW.12) accepting Rs. 30/- (Articles 3 to 5) from Sita Ram while on duty in Man Kayasth Ki Gali,

Chandpole Bazar, Jaipur. The case was registered and after completing the investigation, charge-sheet was filed against the appellant and he was

tried for the afore-mentioned offences, by the learned Special Judge, ACD Cases, Jaipur which culminated in his conviction and sentence on

29.10.84 in the manner as mentioned hereinabove.

2. Aggrieved by the said judgment & order, appellant filed this appeal on various grounds. However, during the course of argument, learned

counsel for the appellant restricted his arguments to the extent of modification in the sentence stating that more than four decades was passed since

the incident as incident pertains to the year 1978 when the appellant was 38 years old and was a low paid safaiwala who on account of serious

ailment is bed ridden at present and is in his old age and a frail health. It was further submitted that he has already suffered incarceration of 55 days

and he is ready to pay enhanced amount of fine if any.

3. Learned Public Prosecutor appearing for the State submits that corruption is rampant in our society and that it is for this reason that the

legislature has laid down the minimum sentence in the Act. According to him, prayer for leniency in awarding sentence should not be accepted

because the corruption by public servant has become a gigantic problem and large scale corruption retards the nation-building activities and

everyone has to suffer on that count. The efficiency in public service would improve only when the public servant devotes his sincere attention and

does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. My attention was drawn to

the judgment of Hon"ble Apex Court in the matter of State of Madhya Pradesh Vs. Shambhu Dayal Nagar, and Madhukar Bhaskarrao Joshi Vs.

State of Maharashtra, .

4. It was submitted that the case of the appellant was proved because the prosecution has sufficiently proved that the appellant was public servant

and he used corrupt/illegal means and abused his post as a public servant and obtained for himself sum of Rs. 30/- as illegal gratification. Thus

there was a motive of recommending the case of the appellant for medical leave for his long absence for about more than 2-1/2 months.

5. I have considered the rival arguments advanced on behalf of both the parties and perused the record as also the impugned judgments. Before

proceeding further, it is necessary to appreciate the relevant legal provision contained in Sec. 5 of the Act of 1947. Section 5(1) defines "Criminal

misconduct in discharge of official duty", which reads as under:

5. Criminal misconduct in discharge of official duty-

(1) A public servant is said to commit the offence of criminal misconduct:-

(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain from any other person, any gratification (other than legal

remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code (45 of 1860), or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without

consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to

be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of

himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so

concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a

public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant obtains for himself or for any other person any valuable

thing or pecuniary advantage, of

(e) if he or any person on his behalf is in possession or has, at any time during the period of his offence, been in possession, for which the public

servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

6. Sub-section (2) of Section 5 of the Act of 1947 simply provides for punishment for the offences dealt with in sub-section (1) of the section.

When any or many of the specific crimes referred to in clauses (a) to (e) in subsection (1) are brought and proved, then sub-section (2) comes into

picture, and the punishment is awarded in accordance with this section. Sec. 5(2) reads as under:

5(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year

but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any specifically reasons recorded in writing impose a sentence of imprisonment of less than one year.

7. The policy of the "Act of 1947" in giving a very wide discretion in the matter of punishment to the Judge has its origin in the impossibility of

laying down standards. The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the

judges with a very wide discretion in the matter of fixing the degree of punishment. The discretion in the matter of sentence is liable to be corrected

by superior courts. Laying down of standards to the limited extent possible would not serve the purpose. The exercise of Judicial discretion on well

recognized principles is, in the final analysis, the safest possible safeguards for the accused. As was held by Hon"ble Apex Court in Jagmohan

Singh Vs. The State of U.P., .

8. The circumstances which could be considered in alleviation of punishment can be the minority of the offender, old age of the offender; the

condition of the offender, I.e. wife, apprentice; and the state of health and the sex of the delinquent.

9. In his book "Ethics of Punishment" Sir waiter Moberly has observed that the principle of punishment is to prevent like offences and to take

away the will to repeat the evil. There is not much of chance of the offences being repeated again.

10. The broad object of punishment of an accused found guilty in civilized societies is to impress on the guilty party that commission of crimes does

not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs. The sentence to be

appropriate should, therefore, be neither too" harsh nor too lenient. Ram Narain Vs. State of Uttar Pradesh, . The Court has, therefore, to keep in

mind the motive and magnitude of the offence, the circumstances in which it was committed and age the character (including his antecedents) and

station in life of the offender.

11. The Hon"ble Apex Court had defined punishment as the mode by which the State enforces its laws forbidding the doing of something and in

case of matters of corruption laws forbidding the doing of the acts mentioned in sub-sec. (1) are enforced through sub-sec. (2) of Sec. 5 of the

"Act of 1947."

12. Here the minimum punishment provided is one year's imprisonment with fine and the maximum punishment is for a term of seven years with

fine. The section itself does not mention about the category of imprisonment whether simple or rigorous. However on the analogy of the Indian

Penal Code, we may take it as rigorous imprisonment. As regards the quantum of fine, necessary guidance has been provided in sub-section (3-b).

In this way the discretion of the Court has been narrowed a bit in awarding punishments. However, in genuine cases where in the opinion of the

Court, the accused deserves a lenient sentence than the minimum prescribed, the court may award a sentence of imprisonment of less than one

year but reasons and the extenuating circumstances will have to be given in writing by the court. (Sajjan Singh Vs. The State of Punjab, .)

13. Section 5(2) of this Act does not create an offence. The offence punishable under this provision of law must be the offence of criminal

misconduct of one or more of the categories mentioned in clauses (a) to (e) of sub-section (1) of Section 5 of this Act. When a person stands

charged of only one type of such misconduct, which fails, he cannot be convicted u/s 5(2) of this Act for any other type of misconduct for which he

was not charged. Thus it is clear that there have to be special reasons for imposing lesser sentence even in the "Act of 1947".

14. In the case of Meet Singh Vs. State of Punjab, , where the High Court of Punjab considered two reasons as special for awarding less than

minimum sentence to the accused viz.: (i) he had lost his job and (ii) he was a family man, Hon"ble Apex Court held that both the reasons

advanced by the High Court were not " special" within the meaning of Section 5(2) and as such there was no justification, much less special

reasons statutorily required, for awarding less than the minimum sentence. Stricto sensu court exceeded its jurisdiction while interfering with the

quantum of sentence.

15. The word "special" means distinguished by some unusual quality peculiar or out of the ordinary. The word has to be understood in

contradistinction to the word "general" or "ordinary". Thus anything which is common to a large class governed by the same statute cannot be said

to be special to each of them. The expression ""special reasons" therefore, in the context of sentencing process must be special to the accused in the

case or special to the facts and circumstances of the case in which the sentence is being awarded. The court has to weigh reasons advanced in

respect of each individual accused whose case is taken up for awarding sentence.

16. Ordinarily a corrupt official whose corruption is proved to the hilt is liable to be dismissed. The question of sentence is within the discretion of

the trial court and the higher courts normally do not interfere with the discretion unless there are adequate grounds for doing so.

17. A sentence loses its efficacy as a deterrent sentence if it is too lenient. The punishment should be such as to deter the public servant from doing

the offences of bribery. Even the consideration that the accused is a petty official and was caught for a small bribe does not warrant a lesser

sentence as held by Hon"ble Apex Court in the case of Suresh Chandra Vs. The State of Gujarat, .

18. in the back ground of position of law in this regard as discussed herein above, under the Act of 1947, if the facts and circumstances of the

accused appellant are taken into consideration, it is clear from the record that appellant was 38 years old at the time of incident in the year 1978

and has already suffered incarceration of 55 days. Presently he is about 72 years old and is said to be suffering from serious ailment and bed

ridden for last few years. As per submissions made by learned counsel for the appellant, on account of his serious ailment, he is in last legs of his

life and no fruitful purpose would be served by sending him now to the incarceration.

19. In my considered opinion, ail these grounds can be said to be special grounds before the Appellate Courts to alleviate the sentence. It is true

that there is rampant corruption in the society and very rarely corruption cases are brought to light and proved for various reasons. However,

special circumstances that more than four decades have passed since the date of incident and is in old age with frail health and a serious ailment

and the fact that he has already suffered 55 days incarceration i.e. approximately two months and is ready to deposit the enhanced fine, influence

this court to exercise discretion in his favour.

20. Accordingly, looking to the health & old age of the accused appellant as also the time period of more than four decades since the time of

incident, I consider it proper to accede to his request and reduce the sentence of incarceration from one year to the period already undergone

while maintaining the sentence of imprisonment under Sec. 161 IPC and 5(2) & 5(1)(d) of the Act of 1947. However, sentence of fine of Rs.

500/- imposed for under Sec. 5(1)(d) is increased to Rs. 2500/- to be paid within three months from the date of this order, failing which appeal

shall be deemed to have been dismissed.

21. Appeal stands disposed off accordingly. The record of Trial Court be remitted forthwith.